



IRA A. JACKSON
COMMISSIONER

The Commonwealth of Massachusetts
Department of Revenue
Leverett Saltonstall Building
100 Cambridge Street, Boston 02204

June 11, 1985

You request a ruling as to the application of the Massachusetts sales tax to sales by

("Company"). The Company has its principal place of business in another state. The Company sells prefabricated metal buildings in Massachusetts through dealers and directly to customers and is registered as a vendor in Massachusetts. You state that the buildings are sold as tangible personal property, but once erected the buildings become real property.

You inquire regarding the application of the Massachusetts sales tax to a series of fact settings. For each fact setting you wish to know whether the Company should collect the Massachusetts sales tax from its customer and whether the local contractor who erects the building should pay Massachusetts use tax. The fact settings and rulings follow.

Generally, Chapter 64H, Section 2 of the Massachusetts General Laws imposes a five percent sales tax on all retail sales of tangible personal property, unless otherwise exempted. Chapter 64I, Section 2 imposes a complementary use tax on the use, storage, or other consumption of tangible personal property in Massachusetts purchased for use, storage, or other consumption in Massachusetts. Section 7(b) of Chapter 64I exempts from the use tax all sales exempt under Chapter 64H.

1. The Fact Setting

A city government purchases a prefabricated metal building from the Company. The Company bills the city government directly and is paid directly by the city. The

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city pays a local contractor to erect the building. In some cases, the city pays the Company's local dealer a commission.

The Sale of the Building

Chapter 64H, Section 6(d) exempts from the sales tax "[s]ales to the United States, the commonwealth or any political subdivision thereof, or their respective agencies." Sales of prefabricated metal buildings are subject to the sales and use taxes, unless otherwise exempted. But a direct sale to a political subdivision of the Commonwealth is exempt from the sales tax. Therefore, the Company should not collect sales tax on a sale to a Massachusetts city government.

Sales exempt from the sales tax are also exempt from the use tax. Therefore, a local contractor who erects a prefabricated metal building for a Massachusetts city government should not pay use tax on the use or consumption of the building.

The Commission

The sales price subject to sales and use taxes includes any commission paid to a dealer. See G.L. c.64H, § 1(14)(a)(ii). If the sale is exempt from the sales tax, the commission is also exempt from the sales tax. Therefore, if the Company sells a building to a Massachusetts city government, no sales tax or use tax is due on the commission paid to the Company's local dealer.

2. The Fact Setting

A city government purchases a building from the Company. In a separate contract, the city hires the Company's local dealer to erect the building.

Charges for Erecting the Building

The sales price subject to sales and use taxes does not include "the amount charged for labor or services rendered in installing or applying the property sold." G.L. c.64H, § 1(14)(c)(iii). The dealer's charges for erecting the building are not included in the sales price, regardless of who the purchaser is. Therefore, the dealer's charges to the city for erecting the building are also not subject to sales tax or use tax.

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3. The Fact Setting

The Company's local dealer purchases a building from the Company. The local dealer intends to resell the building to and erect it for a Massachusetts city government. The dealer, not the city government, is responsible for payment to the Company.

The Sale to the Local Dealer

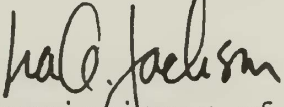
All of a vendor's gross receipts from the sales of tangible personal property are presumed to be from sales subject to tax until the contrary is established. G.L. c.64H, § 8(a). Chapter 64H, Section 6(f) exempts from the sales tax sales of building materials and supplies to be used in the construction of any building owned by any governmental body as described in Section 6(d). To qualify for the exemption the governmental body must first obtain a certificate of exemption from the Commissioner, and the vendor must keep a record of the sales price, the purchaser's name, the date of sale, and the certificate number. G.L. c. 64H, § 6(f).

The burden of proving that a sale is not a taxable retail sale is on the vendor unless he takes a Massachusetts resale certificate in good faith from the purchaser. See G.L. c. 64H, § 8(a), (b); see also G.L. c. 64H, § 8(c). The Company is a vendor in Massachusetts. Therefore, the Company's sale of a building to its local dealer is presumed to be a retail sale subject to tax unless the Company takes a Massachusetts resale certificate in good faith from the dealer.

If the dealer will erect the building for the city, he may present a contractor's exempt purchase certificate (Form ST-5C) to the Company. If the requirements of Section 6(f) are met, the Company's sale to the dealer-contractor is exempt from the sales tax. A sample Form ST-5C is enclosed.

If the dealer will sell the prefabricated building in the regular course of business to the city, who will hire a local contractor to erect the building, the dealer may present a Massachusetts resale certificate (Form ST-4) to the Company. If the dealer does not present a resale certificate to the Company, the Company's sale to the dealer is presumed to be a retail sale subject to tax. A sample Form ST-4 is enclosed.

Very truly yours,


Commissioner of Revenue

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